

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 10, 2002

**D038658      Auxter v. Infinite Possibilities International, Inc. et al.**

Upon written stipulation filed by the parties, the appeal is dismissed. Each party to bear own costs on appeal.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke  
Clerk: D. E. Moore

**D038075      ESSD, Inc. v. Tomskey et al.**

Cause called on merits. Louis E. Goebel, Esq. argued for appellant. Brent Ayscough, Esq. argued for respondent. Cause submitted.

**D037401)      Bell v. Vista Paint Corporation**

**D038048)      Bell v. Vista Paint Corporation et al.**

Cause called on merits. Douglas L. Mahaffey, Esq. argued for appellant. Stanley F. Zubel, Esq. argued for respondent. Mr. Mahaffey replied. Cause submitted.

**D038027      San Diego Unified School District v. Commission on State Mandates/Department of Finance**

Cause called on merits. Susan R. Oie, Deputy Attorney General argued for appellant, Department of Finance. Paul M. Starkey, Esq. argued for appellant, Commission on State Mandates. Jose A. Gonzales, Esq. argued for respondent. Ms. Oie replied. Mr. Starkey replied. Cause submitted.

Court recessed at 10:40 a.m. until 1:30 p.m.

**D037595      Pelayo v. Pacific Maritime Association**

The judgment is reversed. Pelayo is awarded her costs on appeal. McConnell, J.;  
We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D037659      Virtualmagic Asia, Inc.v. Fil-Cartoons, Inc., et al.**

Order modifying opinion and denying rehearing. No change in judgment.

**D039701      Presidio Place Condominium Association v. Kovacic**

The appeal is dismissed pursuant to California Rules of Court, rule 17(a).

**D038266      Atlantic Mutual Insurance Company v. Chromium Graphics, Inc.**

The judgment is affirmed. Costs on appeal are awarded to Chromium. McIntyre, J.;  
We Concur: Nares, Acting P.J., McDonald, J.

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Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke  
Clerk: D. E. Moore

**D039227        Caressa Camille, Inc. v. Espinoza**

Cause called on merits. Ralph B. Saltzman, Esq. argued for petitioner. T. Michelle Laird, Deputy Attorney General argued for Manuel Espinoza-Director of Alcoholic Beverage Control. Mr. Saltzman replied. Cause submitted.

**D037897        People etc. v. Williams**

Cause called on merits. Richard W. Weinthal, Esq. argued for appellant. Johnathan Lynn, Deputy Attorney General argued for respondent. Mr. Weinthal replied. Cause submitted.

Court recessed at 2:09 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D038056        Neumann et al. v. Callahan & Blaine**

Cause called on merits. Jim P. Mahacek, Esq. argued for appellant. David Baumgarten, Esq. argued for respondent. Mr. Mahacek replied for appellant. Cause submitted.

Court recessed at 2:28 p.m. until Tuesday, June 11, 2002 at 9:00 a.m.

**D039235        People v. Nelson**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

**D039453        Leeuwen v. San Diego Regional Group of the Early Ford V8 Club of America et al.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

**D040254        Gomez v. Superior Court of Imperial County/People**

The petition is denied.

**D038506        Summit Resources, Ltd. v. California Coastal Commission**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

**D039906        People v. Hopson**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

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**D038223      People v. Garrido**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

**D038393      In re Angelica B., a Juvenile**

The judgment is affirmed. McConnell, J.; We Concur: McIntyre, J., O'Rourke, J.

**D037034      Bravo v. Ismaj et al.,**

Order affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Haller, J.; We Concur: Kremer, P.J., Huffman, J.

**D039280      People v. Montelier**

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D038479      People v. Pegueros**

Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D037594      People v. Russell**

Judgment affirmed. O'Rourke, J.; We Concur: McDonald Acting P.J., McConnell, J.

**D038301      Keating et al. v. San Diego Civil Service Commission et al.**

The judgment is affirmed. O'Rourke, J.; We Concur: McIntyre, Acting P.J., McConnell, J.

**D038152      People v. Cardenas**

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., McConnell, J.

**D038102      People v. Duarte**

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. E. Moore

**D038995      McGehee v. Curtis et al./Sierra Vista Homeowners Association et al.**

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Jay Jackson Brown, Esq. argued for respondent. Cause submitted.

**D036692      Crowley v. The "Neighbors"**

Cause called on merits. Anton N. Handal, Esq. argued for appellant. John S. Moot, Esq. argued for respondent, The "Neighbors." Corinne Bertsche, Esq. argued for respondent, Curtis. Mr. Handal replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA  
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**D038435        Garrett v. Powers et al.**

Cause called on merits. Edward Marsh, Esq. argued for appellant. Morgan Lee Foley, Esq. argued for respondent, Russell. I. David Small, Esq. argued for respondent, Powers. Mr. Marsh replied. Cause submitted.

Court recessed at 10:15 a.m. until 1:30 p.m.

**D039314        In re Xavier W., a Juvenile**

The juvenile court's orders are affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

**D038051        Park Medical Pharmacy v. San Diego Orthopedic Associates Medical Group, Inc.**

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Kremer, P.J.; We Concur: Huffman, J., McDonald, J.

**D039650        In re Raymond C., a Juvenile**

The respondent's motion to dismiss the appeal is granted. The appeal is dismissed.

**D036282        People v. Guerrero**

The judgment on count 3 (driving under the influence and causing injury) is reversed and the accompanying enhancements to count 3 are stricken.

Judgment on count 2 (gross vehicular manslaughter while intoxicated), count 4 (driving with a blood alcohol of .08 percent or greater and causing injury), and counts 5 and 6 (driving under the influence and causing injury) are affirmed with the following modifications:

- The judgment on count 4 is modified to stay the use of the conviction for penal and administrative purposes pending the finality of the judgment, the stay to become permanent when service of sentence is completed.
- The judgment on counts 5 and 6 are modified to stay the Vehicle Code section 23182 enhancements rather than run them concurrently.

The judgment on count 1 (second degree murder) is vacated, and the case is remanded to the trial court to set a hearing under Code of Civil Procedure section 237, subdivisions (c) and (d), to determine whether the jurors' addresses and telephone numbers should be released to Guerrero's counsel. If, after the hearing, the information is not disclosed, the judgment shall be reinstated since there will be no new evidence. If, after the hearing, the information is disclosed to Guerrero's counsel, the trial court shall set a briefing schedule for a renewed new trial motion and then decide the new trial motion on its merits. If the renewed new trial motion is denied, the judgment on count 1 shall be reinstated.

At the conclusion of the above proceedings concerning count 1, including a new trial if one is ordered, the trial court shall amend the abstract of judgment appropriately and forward the amended abstract of judgment to the Department of Corrections. McConnell, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

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Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller  
Clerk: D. E. Moore

**D036953        Moore v. Moore**

Cause called on merits. Robert P. Otilie, Esq. argued for appellant/cross-respondent. Edwin A. Johnson, Esq. argued for respondent/cross-appellant. Mr. Otilie replied. Mr. Johnson replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

**D039753        Whitney v. Superior Court/Brown-RPI**

Matter called on merits. Gabriele M. Prater, Esq. argued for petitioner. Janeen Lorna D'Angelo, Esq. argued for real party in interest. Ms. Prater replied. Matter submitted.

Court recessed at 2:33 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

**D037455        People v. Torres**

Cause called on merits. Chuck Sevilla, Esq. argued for appellant. Gary Schons, Deputy Attorney General argued for respondent. Mr. Sevilla replied. Cause submitted.

Court recessed at 3:15 p.m. until Wednesday, June 12, 2002 at 9:00 a.m.

**D039794        Sanchez v. Workers Compensation Appeals Board and El Tirge Market**

The petition is denied.

**D040255        Gross v. Superior Court of San Diego County/People**

The petition is denied.

**D039751        In re Smith on Habeas Corpus**

The petition is denied.

**D039826        Angelica Corporation et al. v. Workers Compensation Appeals Board and Roberto Garcia**

The petition is denied.

**D040191        In re Walker on Habeas Corpus.**

The petition is denied.

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**D039768        People v. Zavala**

Upon filing an abandonment of appeal, the appeal is dismissed.

**D039854        In re Morrison on Habeas Corpus**

The petition is denied.

**D039884        In re Wallace on Habeas Corpus**

The petition is denied.

**D036885        Llamas v. Brauer**

The judgment is affirmed. Appellant to bear costs on appeal. O'Rourke, J.  
We Concur: Benke, Acting P.J., Nares, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices  
James McIntyre and Judith McConnell.

Clerk: D. E. Moore

**D036361        Summers v. McClanahan et al.**

Cause called on merits. Mr. John Staley waives opening argument for appellant. Mr. Frank J. Polek  
argued for respondents, Heisner et al.. Ms. Adrienne Brown argued for respondent, McClanahan. Mr.  
John Staley replied for appellant. Cause submitted.

**D037419)        Giles et al. v. Horn et al.**

**D037873)        Giles et al. v. Horn et al.**

Cause called on merits. Ms. Judith A. McDonough argued for appellant, Horn et al. Mr. Thomas Tosdal  
argued for respondent, Giles. Mr. James George Varga argued for respondents, McClure et al.  
Ms. McDonough replied. Cause submitted.

**D037988        Kassab v. Godone-Maresca**

Cause called on merits. Mr. Steve Kassab argued as appellant. Ms. Lillian Godone-Maresca argued as  
respondent. Mr. Kassab replied. Cause submitted.

Court recessed at 10:50a.m. until 1:30 p.m.

**D038995        McGehee v. Sierra Vista Homeowners Association et al.**

The order is affirmed. Huffman, J.; We Concur: Kremer, P.J., McDonald, J.

**D038435        Garrett v. Powers et al.**

The order is affirmed. Respondents are entitled to costs on appeal. McDonald, J.;  
We Concur: Kremer, P.J., Huffman, J.

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**D039020        People v. Williams**

**D040064        In re Williams on Habeas Corpus**

(consolidated) The judgment is affirmed; the petition is denied. Huffman, J.; We

Concur: Kremer, P.J., O'Rourke, J.

**D039960        The Copley Press, Inc. v. Superior Court of San Diego County/City of National City**

The petition is dismissed as moot.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

Clerk: D. E. Moore

**D037596        Alters v. Wolinski**

Cause called on merits. Michael D. Padilla, Esq. argued for appellant. Donald F. Armento, Esq. argued for respondent. Mr. Padilla replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

**D038132        People v. Neild**

Cause called on merits. Diane Nichols, Esq. argued for appellant. Daniel Rogers, Deputy Attorney General argued for respondent. Cause submitted.

**D037937        Favara v. Favara**

Cause called on merits. James Swiderski, Esq. argued for appellant. Sharon L. Kalemkiarian, Esq. argued for respondent. Mr. Swiderski replied. Cause submitted.

Court recessed at 2:50 p.m. until Thursday, June 13, 2002 at 9:00 a.m.

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**D037525        Leary v. Progressive West Insurance Company**

The judgment is affirmed. Costs on appeal are awarded to Progressive. McIntyre, J.  
We Concur: Nares, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices  
Terry O'Rourke and Judith McConnell  
Clerk: D. E. Moore

**D038308        People v. King**

Cause called on merits. Denise Rudasill, Esq. argued for appellant. Christine Levingston, Certified Law Student argued for respondent. Ms. Rudasill replied. Cause submitted.

**D037797        Crawford v. Minor**

Cause called on merits. John A. Finley, Esq. argued for appellant. Eugene P. Kenny, Esq. argued for respondent. Mr. Finley replied. Cause submitted.

**D038580        Golden Eagle Insurance Company v. Insurance Company of the West**

Cause called on merits. Martin L. Shives, Esq. argued for appellant. Peter L. Garchie, Esq. argued for respondent, Connecticut Indemnity Company. Glenn M. White, Esq. argued for respondent, Golden Eagle Insurance Company. Mr. Shives replied. Cause submitted.

Court recessed at 10:40 a.m. until 1:30 p.m.

**D037018        Margala v. Murdock et al.**

**D037540        Margala v. Murdock et al.**

The consolidated appeals are dismissed.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre  
Clerk: D. E. Moore

**D037479        People v. Ernest Rabb**

Cause called on merits. Diane Nichols, Esq. argued for appellant. Tiffany Jones, Certified Law Student argued for respondent. Ms. Nichols replied. Cause submitted.

**D036619        Rhino Linings of Poway, Inc. v. Rhino Linings USA, Inc., et al.**

Cause called on merits. Mark C. Mazzarella, Esq. argued for appellant. Jamie J. Sternberg, Esq. argued for respondent. Mr. Mazzarella replied. Cause submitted.



COURT OF APPEAL OF STATE OF CALIFORNIA  
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June 13, 2002 (Continued)

**D038715        People v. Romero**

Cause called on merits. No appearance by appellant's counsel. Charles Ragland, Deputy Attorney General was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

Court recessed at 2:20 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

**D036680)        McGinnis v. Baxter Healthcare Corporation**

**D037435)        McGinnis v. Baxter Healthcare Corporation**

Cause called on merits. E. Elizabeth Summers, Esq. argued for appellant. James C. Martin, Esq. argued for respondent. Ms. Summers replied. Cause submitted.

Court recessed at 3:11 p.m. until Friday, June 14, 2002 at 9:00 a.m.

**D040261        Cress v. The Superior Court of San Diego County/Morelock et al.**

The petition is denied.

**D039899        In re Brown on Habeas Corpus**

The petition is denied.

**D040266        Chaudry v. The Superior Court of San Diego County/Whispering Ridge  
Homeowners Associatioin**

The petition is denied.

**D039898        In re Zarate on Habeas Corpus**

The petition is denied.

**D040258        B. H. Gold Insurance Agency, Inc. v. Superior Court of San Diego County/Salco  
Espresso & Restaurant Systems, Inc.**

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA  
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June 14, 2002

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices  
Richard Huffman and Gilbert Nares  
Clerk: D. E. Moore

**D035776        People v. McCloud**

Cause called on merits. Carl Fabian, Esq. argued for appellant. Elizabeth Hartwig, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

**D037707        Villarreal et al. v. Days Inn Corporation**

Cause called on merits. Edmundo B. Espinoza, Esq. argued for appellant. Paul W. Legler, Esq. argued for respondent. Mr. Espinoza replied. Cause submitted.

**D037939        People v. Lopez**

Cause called on merits. Joanna McKin, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Ms. McKin replied. Cause submitted.

**D037774        Willis v. Kerr Corporation**

Cause called on merits. Frank C. Rothrock, Esq. argued for respondent. James Love, Esq. argued for appellant. John A. Crawford, Jr., Esq. was present in oral argument, but did not argue. Cause submitted.

Court adjourned at 10:19 a.m.

**D037897        People v. Williams**

The judgment is reversed. Kremer, P.J.; We Concur: Nares, J., O'Rourke, J.

**D037375        Satten v. Webb et al.**

Reversed. Costs are awarded to Satten. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

**D033904        Konja v. Rezai et al.**

As to defendant Rezai, the judgment is affirmed as modified to strike the punitive damages award, with directions to the trial court to enter a new modified judgment. However, with respect to defendant Anton, we reverse the judgment in its entirety, with directions to enter judgment for Anton. Huffman, J.; We Concur: Benke, Acting P.J., Halle, J.

**D036692        Crowley v. The Neighbors et al.**

The orders granting Owners' and Brokers' motions for summary judgment and judgments dismissing Crowley's complaint are affirmed. McDonald, J.; We Concur: Kremer, P.J., Huffman, J.

COURT OF APPEAL OF STATE OF CALIFORNIA  
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**D038011        People v. Gonzales**

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D035947        Smith v. San Dieguito Union High School District et al.**

The request for publication of the opinion is denied.